

1990

State of Utah v. Dell D. Archuleta : Brief of Appellee

Utah Court of Appeals

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UTAH COURT OF APPEALS
BRIEF

DOCKET NO. 90-5 ~~IN THE~~ UTAH COURT OF APPEALS

STATE OF UTAH, :
Plaintiff-Appellee, : Case No. 900375-CA
v. :
DELL D. ARCHULETA, : Category No. 2
Defendant-Appellant. :

BRIEF OF APPELLEE
- - - - -

APPEAL FROM AN ORDER REVOKING DEFENDANT'S
PROBATION FOR CONVICTIONS OF THEFT, A SECOND
DEGREE FELONY, IN VIOLATION OF UTAH CODE ANN.
§ 76-6-404 (1990), AND THEFT BY DECEPTION, A
CLASS B MISDEMEANOR, IN VIOLATION OF UTAH
CODE ANN. § 78-2a-405 (1990), IN THE THIRD
JUDICIAL DISTRICT COURT IN AND FOR SALT LAKE
COUNTY, STATE OF UTAH, THE HONORABLE PAT B.
BRIAN, JUDGE, PRESIDING.

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IN THE UTAH COURT OF APPEALS

STATE OF UTAH, :
Plaintiff-Appellee, : Case No. 900375-CA
v. :
DELL D. ARCHULETA, : Category No. 2
Defendant-Appellant. :

BRIEF OF APPELLEE

- - - - -

JURISDICTION AND NATURE OF PROCEEDINGS

This is an appeal from an order revoking defendant's probation for convictions of theft, a second degree felony, in violation of Utah Code Ann. § 76-6-404 (1990), and theft by deception, a class B misdemeanor, in violation of Utah Code Ann. § 76-6-405 (1990). This Court has jurisdiction to hear the appeal pursuant to Utah Code Ann. § 78-2a-3(2)(f) (Supp. 1990), as the appeal is from a district court in a criminal case not involving a conviction of a first degree felony.

STATEMENT OF ISSUE PRESENTED AND STANDARD OF REVIEW

Did the trial court properly revoke defendant's probation? A trial judge's order revoking probation will be upheld absent an abuse of discretion. State v. Jameson, 146 Utah Adv. Rep. 3, 5 (Utah October 22, 1990).

CONSTITUTIONAL PROVISIONS, STATUTES AND RULES

The language of the provisions upon which the State relies is included in the body of this brief.

STATEMENT OF THE CASE

Defendant was charged by information with one count of theft, a second degree felony, in violation of Utah Code Ann. § 76-6-404 (1990), and one count of theft by deception, a class B misdemeanor, in violation of 76-6-405 (1990) (Record [hereafter R.] at 6). Trial by jury was held on September 18, 1989, in the Third Judicial District Court for Salt Lake County, the Honorable Pat B. Brian, district judge, presiding (R. at 36). Defendant was convicted of both counts (R. at 25-6). On October 6, 1989, defendant was sentenced to the Utah State Prison for a term not less than one year nor more than fifteen years, and ordered to pay a fine in the amount of \$10,000.00 and restitution in the amount of \$77.00 (October 6, 1989 Sentencing Transcript [hereafter S.T.] at 5 and R. at 73). Both the sentence and fine were stayed and defendant was placed on probation for 18 months on the following conditions (S.T. at 5):

1. Usual and ordinary conditions required by the Department of Adult Probation and Parole.
2. Serve 90 days in the Salt Lake County Jail. The court will give the defendant credit for time served, and deem the 90 days to have been served as of October 6, 1989.
3. Pay a fine in the amount of \$1,000.00 at the rate of \$100.00 per month starting January 1, 1990.
4. Pay restitution in the amount of \$77.00 in full by June 1, 1990.

5. Obtain employment by October 16, 1989 and maintain full-time employment (40 hours per week).

6. Commit no crimes.

7. Must pay child support in the amount of \$75.00 per month starting November 1, 1989. All child support arrearages must be paid within 18 months at a rate of \$225.00 per month. Total child support payments are \$300.00 per month. One-half to be paid at the first of the month and the other half to be paid on the fifteenth of the month.

8. Evaluated by APPD for drug or alcohol abuse and if needed, enter any program deemed appropriate by APPD.

(S.T. at 5-7 and R. at 74 and included as Addendum A).

On May 22, 1990, the court issued an order to show cause based on allegations that defendant had violated the terms and conditions of his probation. At the order to show cause hearing, the court made the following findings:

1. The defendant failed to report to Adult Probation and Parole in May, 1990.

2. The defendant failed to maintain verifiable, lawful employment and/or education.

3. The defendant failed to pay \$100.00 per month towards his fine.

4. The defendant failed to pay a total of \$300.00 per month towards his child support obligation.

(Order to Show Cause Hearing [hereafter H.T.] at 31-32 and R. at 95-96 and included as Addendum B). Based on these findings, the court revoked defendant's probation and reinstated probation for eighteen months after his release from jail¹ upon the following

¹ Defendant was released from the Salt Lake County Jail on August 17, 1990.

conditions:

1. That all conditions of probation previously imposed be in effect.
2. That he serve six months in jail with credit for time served.
3. That within fifteen calendar days from his release from jail, he be employed sixty hours per week, and that he provide written verification of the same.
4. That he be enrolled in vocational training as soon as possible after his release from jail, but no later than ninety days from that release; further that any costs he pays towards said vocational training can be deducted from the fine previously imposed.

(R. at 96; Addendum B).

STATEMENT OF THE FACTS

The facts pertinent to this appeal are contained in the statement of the case.

SUMMARY OF THE ARGUMENT

The trial court properly revoked defendant's probation because the state proved beyond a reasonable doubt that defendant failed to report to his probation supervisor by May 5, 1990; that defendant failed to maintain full-time employment; and that defendant failed to pay the fines, restitution and child support as ordered by the court.

Defendant did not keep faith with the court or the agency which supervised his probation. He therefore willfully violated the conditions of his probation.

ARGUMENT

POINT I

THE TRIAL COURT PROPERLY REVOKED DEFENDANT'S PROBATION.

Defendant argues that the trial court erred in revoking his probation. He claims that he did not willfully violate his probation and alleges that he in fact made good faith efforts to abide by the conditions of his probation (Brief of Appellant [hereafter Br. of App.] at 8-10). The record however does not support defendant's good faith claim.

Utah Code Ann. § 77-18-1(9)(e) (Supp. 1990) states:

After the hearing the court shall make findings of fact. Upon a finding that the defendant violated the conditions of probation, the court may order the probation revoked, modified, continued, or that the entire probation term commence anew. If probation is revoked, the defendant shall be sentenced or the sentence previously imposed shall be executed.

At the order to show cause hearing on June 20, 1990, the trial court found that the State proved beyond a reasonable doubt four of the five violations alleged in the affidavit in support of order to show cause (H.T. at 31-32 and R. at 80-81). As a result of these findings, the trial court revoked defendant's probation. However, rather than reinstating defendant's original sentence of not less than one year nor more than fifteen years, at the Utah State Prison, the trial court granted 18 months probation and a six-month jail sentence in the Salt Lake County Jail.

In State v. Green, 757 P.2d 462 (Utah 1988), the Utah Supreme Court stated:

[W]e reaffirm that judges may exercise sentencing discretion within those limits established by the legislature; the power to fix sentencing limits and the power to suspend sentence in favor of probation are not inherent in the judiciary but must be authorized by statute. Similarly, the power to revoke probation must be exercised within legislatively established limits.

757 P.2d at 464. Because nothing in the record shows that defendant "[kept] faith with the court and the agency which supervise[d] his probation," State v. Hodges, 798 P.2d 270 (Utah Ct. App. 1990) (quoting State v. Bonza, 150 P.2d 970, 972 (Utah 1944)), the trial court correctly revoked defendant's probation. The trial court's actions were clearly within the legislatively established limits of Utah Code Ann. § 77-18-1(9)(e) (Supp. 1990) and the order revoking probation should be upheld by this Court.

A. STANDARD OF REVIEW

In State v. Cowdell, 626 P.2d 487, 488 (Utah 1981), the Utah Supreme Court observed that "the decision of a trial court to modify or revoke probation is basically a discretionary matter." This was reaffirmed in State v. Jameson, 146 Utah Adv. Rep. 3 (Utah October 22, 1990). Earlier, in Williams v. Harris, 149 P.2d 640, 642 (Utah 1944), the Utah Supreme Court stated that the State's burden required a showing of "some competent evidence." Similarly, several jurisdictions have observed that the standard of proof required for revocation of probation is that the evidence and facts reasonably satisfy the judge that the probationer's conduct has not been as required by the conditions of probation. See United States v. Guadarrama, 742 F.2d 487 (9th Cir. 1984); United States v. O'Quinn, 689 F.2d 1359 (11th Cir.

1982); United States v. Young, 756 F.2d 64 (8th Cir. 1985).

Other courts have held that "a [trial] court requires little evidence to find that a probationer has violated his probation conditions." See United States v. Warner, 830 F.2d 651 (7th Cir. 1987); United States v. Torrez-Flores, 624 F.2d 776, 780-81 (7th Cir. 1980).

However, in State v. Hodges, 798 P.2d 270, 278 (Utah Ct. App. 1990), this Court held that "the standard to be used in proving a violation of a condition of probation is a preponderance of the evidence."² The Court provided some guidance in meeting the standard:

Under the preponderance of evidence standard, the court needs only to balance the evidence, using discretion to weigh its importance and credibility, and decide whether the probationer has more likely than not violated the conditions of probation.

798 P.2d at 279.

Whether a preponderance of evidence is the appropriate standard or not, the trial court in this case found that the State proved, beyond a reasonable doubt, four of the five violations alleged in the affidavit in support of order to show

² Because the panel of this Court in Hodges effectively overruled the "some competent evidence" standard adopted by the Utah Supreme Court in Williams, something the Utah Court of Appeals does not appear to have the authority to do, the State has filed a petition for writ of certiorari in that case in the Utah Supreme Court. However, for purposes of this appeal, the State will address defendant's claim under the Hodges preponderance standard. The State, nevertheless, maintains that this Court is bound to follow the Supreme Court's "some competent evidence" standard until the Supreme Court sees fit to abandon it. Indeed, this panel is not obligated to follow Hodges on this point, in that Hodges is in direct conflict with Williams; this Court could review defendant's probation revocation under the "some competent evidence" standard.

cause (H.T. at 31-32 and R. at 80-81). Because "beyond a reasonable doubt" is a higher standard than "preponderance of evidence", it is logical to conclude that the evidence presented at the revocation hearing established by at least a preponderance of the evidence that defendant violated the terms of his probation. Indeed, the record supports that conclusion. Consequently, the trial court did not abuse its discretion in revoking defendant's probation.

B. DEFENDANT DID NOT KEEP FAITH WITH THE COURT AND THE AGENCY WHICH SUPERVISED HIS PROBATION AND THEREFORE WILLFULLY VIOLATED THE CONDITIONS OF HIS PROBATION.

As part of his probation requirements, defendant was to report to his probation officer by the fifth of each month and fill out a monthly report (H.T. at 7). Defendant took no affirmative steps to meet this requirement. Only through the efforts of three different probation officers to contact defendant and remind him of his obligation were any reports filed (H.T. at 4-7). Such spoon feeding was not contemplated by the court when it granted the privilege of probation. Simply because defendant's probation officers succeeded on a few occasions to get defendant to file his monthly report does not mean that they now bear the burden and consequences of defendant's failure to comply with his probation requirements. Thus, defendant's analogy to contract law has no place in this proceeding (Br. of App. at 10-15). The court ordered that defendant comply with the usual and ordinary conditions required by the Department of Adult Probation and Parole (R. at 74). One of these ordinary conditions requires defendant to report to his supervising agent

in person by the fifth of each month. Defendant consistently "forgot" to report (H.T. at 14, 20, 22). After a meeting with Karl Bartell on April 4, 1990, in which defendant was given 30 days to begin complying with his probation requirements, defendant again failed to report to Adult Probation and Parole by May 5, 1990 (H.T. at 7 and R. at 95). Mr. Bartell was justified in alleging at that point that defendant had violated the conditions of his parole.

Defendant claims he was serious about being employed (Br. of App. at 16). Yet, defendant failed to maintain full-time employment as required by the court. At the order to show cause hearing the trial court stated:

The Court finds that the State has proved beyond a reasonable doubt allegation No. 3 in the affidavit, in that the defendant violated previously granted probation by having failed to maintain verifiable, lawful employment. This Court will take judicial notice that from South Temple to 5300 South on State Street, on any given day, there are probably 15 or 20 help wanted signs posted in living color in the windows of business establishments. Employment in this community can be had, if a person is serious about being employed. Compensation may not be more than minimum wage. Nevertheless, it is there for a person serious about being employed

(H.T. at 31). It is apparent from this finding that the trial court was convinced that defendant had not made reasonable effort to find employment. In Bearden v. Georgia, 461 U.S. 658 (1983), the United States Supreme Court stated:

[A] probationer's failure to make sufficient bona fide efforts to seek employment . . . in order to pay the fine or restitution may reflect an insufficient concern for paying the debt he owes to society for his crime. In such a situation, the State is likewise

justified in revoking probation and using imprisonment as an appropriate penalty for the offense.

461 U.S. at 668.

The record reflects that defendant had brief full-time employment, which he quit, and worked part-time through a temporary service (H.T. at 15, 18). This did not comply with the order of the court. The probation conditions required defendant to work 40 hours a week (R. at 74). Further, the trial judge informed defendant that he may need to obtain a second or third job in order to pay his debts and comply with his probation requirements (S.T. at 7). Because defendant failed to maintain a full time job, the court was justified in finding that he was in violation of his probation agreement.

Defendant also claims the court erred in its decision to revoke his probation for financial noncompliance (Br. of App. at 23). Again in Bearden, the United States Supreme Court held:

A sentencing court cannot properly revoke a defendant's probation for failure to pay a fine and make restitution, absent evidence and findings that he was somehow responsible for the failure or that alternative forms of punishment were inadequate to meet the State's interest in punishment and deterrence.

Id. at 660. At the same time, however, the Bearden Court recognized that "[a] defendant's poverty in no way immunizes him from punishment." Id. at 669.

The circumstances in this case differ significantly from those in Bearden. The Bearden Court, unlike the trial court in the case at bar, made no finding that the defendant had not made sufficient bona fide efforts to find work. Id. at 673 The

defendant in Bearden borrowed money from his parents to pay the first \$200.00 of his fine. Id. at 663. Defendant in the present case paid nothing toward his fines, restitution or child support.³ When the defendant in Bearden, who had only a ninth-grade education and could not read, was laid off from his job, he notified his probation officer that his payment would be late because, after repeated efforts, he was unable to find another job. Id. There is no evidence in this record that defendant contacted any of his probation supervisors to inform them that he would not be able to meet his financial obligations. His own testimony reveals that, on the occasions when he did report, "[he] was always able to talk to them about a lot of personal problems that [he] was having" (H.T. at 13). But he never testified that he spoke with them about meeting the financial obligations imposed by probation. Finally, the Court in Bearden reinstated defendant's prison sentence upon revoking his probation. The trial court in the case at bar allowed defendant's probation to commence anew pursuant to Utah Code Ann. § 77-18-1(9) (Supp. 1990).

³ Defendant claims that he made \$20.00 payments to his daughter's mother and that these payments were no different than indirect payments submitted to the Division of Recovery Services (Br. of App. at 19-20). At the sentencing hearing, the court addressed this issue, stating: "You [defendant] obtain a statement in the form of an affidavit from your ex-wife, that that money has been received in the form of child support, how much, over what period of time, and the Court will reconsider the total amount of arrearages in light of any documentation you submit, showing payment of child support" (S.T. at 8). The record contains no such documentation, nor does it indicate that defendant attempted to provide the documentation.

Defendant never denies that he violated his probation agreement. He only argues that the violations were not willful. Further, although defendant claims that the trial court erred in not informing him that it would accept token payments, he never asserts that he did not understand what was required of him on probation. In fact, the opposite is true. The court questioned defendant about his understanding:

Q. You went into the probation department after you were placed on probation by this Court, and signed the probation agreement dated October 19, 1989, did you not?

A. Yes.

Q. There was really no question in your mind as to what your--what you were to do in the nine months that passed since that date, was there?

A. No, I knew exactly what I was supposed to do, required to do.

(H.T. at 26).

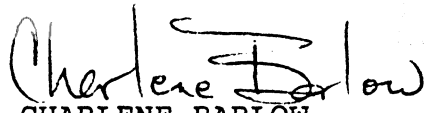
Defendant understood what was required of him on probation. Yet, he willfully violated the conditions of his probation by failing to report by the 5th of each month, failing to maintain full-time employment and failing to pay the fines, restitution and child support ordered by the court. As a result, the trial court properly revoked defendant's probation.

CONCLUSION

Based on the foregoing, the State respectfully requests that this Court affirm the trial court's decision to revoke defendant's probation.

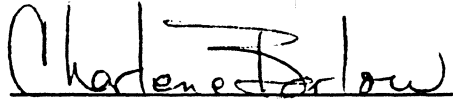
RESPECTFULLY submitted this 17th day of December, 1990.

R. PAUL VAN DAM
Attorney General


CHARLENE BARLOW
Assistant Attorney General

CERTIFICATE OF MAILING

I hereby certify that four true and accurate copies of the foregoing Brief of Appellee were mailed, postage prepaid, to Lisa J. Remal and Ronald S. Fujino, SALT LAKE LEGAL DEFENDERS ASSOC., Attorneys for defendant, 424 East 500 South, Suite 300, Salt Lake City, Utah 84111, this 17th day of December, 1990.


Charlene Barlow

ADDENDA

ADDENDUM A

1 we would do is be back here on an order to show cause. If he
2 did pay the fine, it would be taking money from that potential
3 source. I would ask the Court to reduce the fine, but, rather
4 than just reduce that as a penalty altogether, to give him
5 some additional community service in lieu of that.

6 THE COURT: Anything further?

7 MS. REMAL: Nothing further, your Honor.

8 THE COURT: Is there any legal reason why sentence
9 should not be imposed?

10 MS. REMAL: None that I know of.

11 THE COURT: The defendant has heretofore been
12 convicted of theft, a second-degree felony. For that offense,
13 the defendant is sentenced to the Utah State Prison for the
14 term prescribed by law, a fine of \$10,000 is imposed. The
15 imposition of that sentence is suspended. The defendant is
16 placed on probation for 18 months on the following terms and
17 conditions: One, the defendant serve 90 days in the Salt Lake
18 County Jail. The Court will give the defendant credit for
19 time served, and deem the 90 days to have been served as of
20 October 6, 1989.

21 The Court imposes a fine of \$1,000 plus the
22 surcharge. That fine is to be paid at \$100 a month on the
23 first day of each month, and the first payment is to commence
24 January 1, 1989 -- 1990. And the fine is to be paid in \$100
25 increments thereafter on the first day of each month until the

1 fine and the surcharge have been paid. The Court will not
2 impose community service.

3 The defendant is ordered to pay restitution. That
4 amount is to be paid in full on or before June 1, 1990.

5 The Court orders that the defendant be evaluated for
6 drug and alcohol abuse, and if treatment is deemed appropriate
7 by the probation department, that the defendant enter into and
8 complete any program recommended by Adult Probation and
9 Parole.

10 The defendant is ordered to obtain and maintain
11 full-time employment, with a minimum of 40 hours of work each
12 week for the entire time the defendant is on probation.
13 Employment is to commence no later than October 9, 1989.

14 The defendant is further ordered, as a condition of
15 probation, to pay child support as ordered in previous court
16 orders; that is, to pay \$75 per month in child support. The
17 current child support payment is to commence on November 1,
18 1989, and be paid on the first day of each month thereafter,
19 with regularity.

20 The Court further orders that the arrearages, in the
21 amount of \$3,900, be paid in full in the next 18 months.
22 Those payments are to be made at \$225 a month in arrearages.
23 The \$75 a month current child support, for a total payment of
24 \$300 per month in child support. Half that payment is to be
25 made on the 1st day of each month, and half on the 15th day of

1 each month. And the Court insists that that term and
2 condition of probation be complied with.

3 The recoupment fee is not ordered.

4 The defendant is ordered to be law-abiding.

5 The defendant needs to understand that should you
6 come before this Court on a willful violation of any order
7 that represents a term or condition of your probation, you
8 will go back to jail. Do you understand?

9 THE DEFENDANT: Yes, I do.

10 THE COURT: You may be required to obtain a second
11 job. You may be required to obtain a third job. You better
12 get with it. The Court expects that child support and
13 arrearages to be paid in full, your current child support to
14 be maintained, the fine to be paid, and the restitution to be
15 paid.

16 THE DEFENDANT: May I say something?

17 THE COURT: You may.

18 THE DEFENDANT: I have been paying my child support
19 to my ex-girlfriend, my daughter's mother, and she was on
20 welfare, and I didn't know about it. That's the only reason
21 why it is backed up so far. They got ahold of me through my
22 sister, and told me all this back money, when all this time I
23 had been paying it.

24 THE COURT: If you have any verification that child
25 support has been paid, which would legally offset the

Judgment/State v. Deft D. Archuleta /CR _____ /Honorable Pat Brian

CONDITIONS OF PROBATION

- ☒ Usual and ordinary conditions required by the Dept. of Adult Probation & Parole.
- ☒ Serve 90 Days - Credit for time served.
in the Salt Lake County Jail commencing to be released forthwith.
- ☒ Pay a fine in the amount of \$100 ☐ at a rate to be determined by the Department of Adult Probation and Parole; or ☒ at the rate of 100.00 month starting January 1, 1990.
- ☒ Pay restitution in the amount of \$77.00 or ☐ in an amount to be determined by the Department of Adult Probation and Parole; ☒ at a rate of in full by 6-1-90; or ☐ at a rate to be determined by the Department of Adult Probation and Parole.
- ☐ Enter, participate in, and complete any _____ program, counseling, or treatment as directed by the Department of Adult Probation and Parole.
- ☐ Enter, participate in, and complete the _____ program at _____.
- ☐ Participate in and complete any ☐ educational; and/or ☐ vocational training ☐ as directed by the Department of Adult Probation and Parole; or ☐ with _____.
- ☐ Participate in and complete any _____ training ☐ as directed by the Department of Adult Probation and Parole; or ☐ with _____.
- ☐ Submit person, residence, and vehicle to search and seizure for the detection of drugs.
- ☐ Submit to drug testing.
- ☐ Not associate with anyone who illegally uses, sells, or otherwise distributes narcotics or drugs.
- ☐ Not frequent any place where drugs are used, sold, or otherwise distributed illegally.
- ☐ Not use or possess non-prescribed controlled substances.
- ☐ Refrain from the use of alcoholic beverages.
- ☐ Submit to testing for alcohol use.
- ☐ Take antabuse ☐ as directed by the Department of Adult Probation and Parole.
- ☒ Obtain and maintain full-time employment. 40 hours a week.
- ☐ Maintain full-time employment.
- ☐ Obtain and maintain full-time employment or full-time schooling.
- ☐ Maintain full-time employment or obtain and maintain full-time schooling.
- ☐ Defendant is to have no contact nor associate with _____.
- ☐ Defendant's probation may be transferred to _____ under the Interstate Compact as approved by the Department of Adult Probation and Parole.
- ☐ Complete _____ hours of community service restitution as directed by the Department of Adult Probation and Parole.
- ☐ Complete _____ hours of community service restitution in lieu of _____ days in jail.
- ☒ Defendant is to commit no crimes.
- ☐ Defendant is ordered to appear before this Court on _____ for a review of this sentence.
- ☒ must obtain employment by Oct 16, 1989.
- ☒ must pay child support as ordered starting Nov 1, 1989 \$75.00 per month
- ☒ all child support arrearages must be paid in 18 months
- ☒ at a rate of \$225.00 per month. Total payment \$300.00 per month.
- ☒ 1/2 at 1st month - 1/2 paid on 15th month.
- ☒ Evaluated by APPD for Drug or alcoholic abuse. If needed enter any program deemed appropriate by APPD.

DATED this 10 day of October 1989.

DISTRICT COURT JUDGE

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ADDENDUM B

1 probation to date. Turn your life around. Get serious about
2 this. It appears to the Court that that patience and long
3 suffering and that sage counsel and advice fell on deaf ears.

4 The Court finds beyond a reasonable doubt that the
5 defendant has violated previously granted probation, in that
6 the defendant did not submit his monthly reports by the 5th of
7 the month, as agreed to by the defendant, as set forth in the
8 allegation No. 1 of the affidavit.

9 The Court finds that the State did not meet their
10 burden in allegation No. 2, regarding residence. There is
11 some confusion about whether or not the defendant lived there,
12 and whether or not that was a valid residence. The Court is
13 not convinced beyond a reasonable doubt that the question of
14 residence was proved.

15 The Court finds that the State has proved beyond a
16 reasonable doubt allegation No. 3 in the affidavit, in that
17 the defendant violated previously granted probation by having
18 failed to maintain verifiable, lawful employment. This Court
19 will take judicial notice that from South Temple to 5300 South
20 on State Street, on any given day, there are probably 15 or 20
21 help wanted signs posted in living color in the windows of
22 business establishments. Employment in this community can be
23 had, if a person is serious about being employed.
24 Compensation may not be more than minimum wage. Nevertheless,
25 it is there for a person serious about being employed.

1 The Court finds that the State has proved beyond a
2 reasonable doubt allegation No. 4 in the affidavit, in that
3 the defendant failed to pay the minimum amount set by the
4 Court of \$100 per month toward his fine. There has not been
5 one nickel paid on that fine in nine months. Not a penny.

6 The Court further finds that the State has proved
7 beyond a reasonable doubt allegation No. 5 in the affidavit in
8 support of the order to show cause, in that the defendant
9 failed to make any child support payments toward what is now
10 in excess of \$4,000 in child support arrearages. Payment of
11 child support is not of recent -- nonpayment of child support
12 is not of recent origin. There is a longstanding, historical
13 refusal by the defendant to pay child support. And the
14 records verify that.

15 The Court finds that the defendant has violated
16 previously granted probation, granted to this defendant on the
17 6th of October, 1989. The sole question before the Court now
18 is whether or not the defendant should be reinstated on the
19 original terms of probation, with additional terms of
20 probation added thereto, or whether or not the original prison
21 sentence handed down and stayed should be imposed. The Court
22 will hear from counsel.

23 MR. SKORDAS: Since Mr. Bartell would be the person
24 supervising him, could I allow him to address the Court on
25 that?

FILED DISTRICT COURT
Third Judicial District

JUL 6 1990

LISA J. REMAL, (#2722)
Attorney for Defendant
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424 East 500 South, Suite 300
Salt Lake City, Utah 84111
Telephone: 532-5444

SALT LAKE COUNTY
By E. Matheson
Deputy Clerk

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

THE STATE OF UTAH,	:	ORDER
Plaintiff,	:	
v.	:	
DELL D. ARCHULETTA,	:	Case No. 891901028FS
Defendant.	:	HONORABLE PAT B. BRIAN

After having heard the testimony of the witnesses presented by the State and by the defendant, and having heard the arguments of counsel,

The Court finds that the defendnat has violated his probation as follows:

1. The defendant failed to report to Adult Probation and Parole in May, 1990, as alleged in allegation No. 1 of the Order to Show Cause.
2. The defendant failed to maintain verifiable, lawful employment and/or education, as alleged in allegation No. 3 of the Order to Show Cause.
3. The defendant failed to pay \$100 per month towards his fine, as alleged in allegation No. 4 of the Order to Show Cause.

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4. The defendant failed to pay a total of \$300 per month towards his child support obligation, as alleged in allegation No. 5 of the Order to Show Cause.


Based upon those findings,

IT IS HEREBY ORDERED that the defendant's probation be revoked and reinstated on probation for eighteen (18) months after his release from jail upon the following conditions:

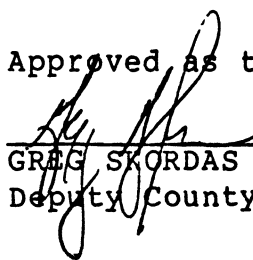
1. That all conditions of probation previously imposed be in effect.
2. That he serve six months in jail with credit for time served.
3. That within fifteen calendar days from his release from jail, he be employed sixty hours per week, and that he provide written verification of the same.
4. That he be enrolled in vocational training as soon as possible after his release from jail, but no later than ninety days from that release; further that any costs he pays towards said vocational training can be deducted from the fine previously imposed.

DATED this 6 day of July, 1990.

BY THE COURT:


HONORABLE PAT B. BRIAN
Third District Court

Approved as to form:


GREG SKORDAS
Deputy County Attorney

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